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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/275,887	03/25/1999	JOSEPH ROBERT OFFUTT JR.	07099.0980	1353

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EXAMINER

MORGAN, ROBERT W

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 08/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/275,887

Applicant(s)

OFFUTT ET AL.

Examiner

Robert W. Morgan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-8,10-13,15-19,21-24,26-30 and 32-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,10-13,15-19,21-24,26-30 and 32-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/9/04 and 4/26/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the amendment filed 5/19/04. Claims 1, 4, 10, 12, 15, 21, 23, 26, 32, 36, 43, 44, 49, and 50 have been amended and claims 3, 9, 14, 20, 25 and 31 have been canceled. Now claims 1, 2, 4-8, 10-13, 15-19, 21-24, 26-30 and 32-51 are presented for examination.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 12, 13, 23, 24, 35, 36, 43-45, 48 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,862,357 to Ahlstrom et al. and U.S. Patent No. 5,331,546 to Webber et al., for substantially the same reasons set forth in the previous Office Action (dated 11/19/03) and in view of U.S. Patent No. 4,879,648 to Cochran et al. Further reasons appear below.

Claims 1, 12, 23, 36, 43, 44, and 50 have been amended to now recite the step of "...selected originating location, selected destination location, and proximity tolerance specifying a user's acceptable distance range of at least one of an alternative originating location or alternative destination location for searching for alternative itineraries" and "...within the proximity tolerance and ..."

As per this limitation, Ahlstrom et al. and Webber et al. teach that the user inputs a starting location and a destination (see: Ahlstrom et al.: column 2, line 25). Ahlstrom et al. and Webber et al. also teach that alternative itineraries are evaluated during the data processing request where intermediate travel stops and alternative city pairings are evaluated to determine the optimum itinerary (see: Ahlstrom et al.: column 2, line 66 to column 3, line 15).

Ahlstrom et al. and Webber et al. fail to teach the claimed “proximity tolerance specifying a user’s acceptable distance range of at least one of an alternative originating location or alternative destination location for searching for alternative itineraries” and “...within the proximity tolerance and ...”

Cochran et al. teaches in one particular embodiment, a structured database of hotel and resort information records are searched and records are selected using any of the following qualifiers or selected search terms: proximity to another location, e.g. larger city, number of accommodations available; proximity to specific area of interest such as a tourist attractions, business location or airports (see: column 5, lines 63 to column 6, lines 7). Cochran et al. further teaches that the selected search terms for searching through the structured database include a search method that displays “IF APT. CODE THEN” section including parameter for the user to determine the appropriate distance to search from a particular hotel, tourist attractions, business location or airports (see: Fig. 4).

One of ordinary skill in the art at the time the invention was made would have found it obvious to include the searching and recording of proximity to specific area of interest such as a tourist attractions, business location or airports as taught by Cochran et al. with the system as taught by Ahlstrom et al. and Webber et al. with the motivation of qualify the search through the

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data base or identify which of the further categories will be made available to the user (see: Cochran et al.: column 4, lines 49-52).

4. Claims 4-8, 15-19, 26-30, 32, 46-47, and 51 are rejected under 35 U.S.C. 103 (a) as being unpatentable over U.S. Patent 4,862,357 to Ahlstrom et al. in view of U.S. Patent No. 5,331,546 to Webber et al. as applied to claim 1 above, and further in view of U.S. Patent 5,948,040 to DeLorme et al.

Claims 5-8, 16-19, 27-30, 46-47, and 51 have not been amended, and are rejected for the same reasons given in the previous Office Action (dated 11/19/03), and incorporated herein. Further reasons appear hereinbelow.

As per claims 4, 15, and 26 the amendment appears to have been made to merely change the dependency, but otherwise do not affect the scope and breath of the claim as originally presented and/or in the manner in which the claim was interpreted by the Examiner when applying prior art within the previous Office Action.

As such, the recited claim features of claims 4, 15, and 26 are rejected for the same reasons given in the prior Office Action (dated 11/19/03), and incorporated herein.

Claim 32 has been amended to now recite the step of "...for the travel itinerary reflected in the request, and any predetermined travel packages that include travel for the at least one alternative..."

As per this limitation, DeLorme teaches that hotel chains, state tourism bureaus, and local chambers of commerce publish travel package embodiments for planning trips, printing maps, discount offers, trip directions and other such information about a limited range of attractions, events or seasonal activities (see column 13, lines 48-67). In addition, Webber et al. teaches a

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travel planner system where a travel arranger requests a flight from New York City (NYC) airport to Los Angeles International Airport (LAX) departing no earlier than 8 a.m. and no later than 10 a.m. and arriving no later 3 a.m. (see: column 17, line 38 to column 19, line 47). There are 6 flight displayed to the travel arranger that include departure from two different airports (JFK and EWR) according to price, date and time (see: column 19, lines 33-44 and Table).

5. Claims 10, 21, and 49 are rejected under 35 U.S.C. 103 (a) as being unpatentable over U.S. Patent 4,862,357 to Ahlstrom et al., U.S. Patent No. 5,331,546 to Webber et al., U.S. Patent 5,948,040 to DeLorme et al., for substantially the same reasons set forth in the previous Office Action (dated 11/19/03) and in view of U.S. Patent No. 4,879,648 to Cochran et al. Further reasons appear below.

Claims 10, 21 and 49 has been amended to now recite the step of "...selected originating location, selected destination location, and proximity tolerance specifying a user's acceptable distance range of at least one of an alternative originating location or alternative destination location for searching for alternative itineraries" and "...within the proximity tolerance and ..."

As per this limitation, Ahlstrom et al., Webber et al. and DeLorme et al. teach that the user inputs a starting location and a destination (see: Ahlstrom et al.: column 2, line 25). Ahlstrom et al., Webber et al. and DeLorme et al. also teach that alternative itineraries are evaluated during the data processing request where intermediate travel stops and alternative city pairings are evaluated to determine the optimum itinerary (see: Ahlstrom et al.: column 2, line 66 to column 3, line 15).

Ahlstrom et al., Webber et al. and DeLorme et al. fail to teach the claimed "proximity tolerance specifying a user's acceptable distance range of at least one of an alternative

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originating location or alternative destination location for searching for alternative itineraries” and “...within the proximity tolerance and ...”

Cochran et al. teaches in one particular embodiment, a structured database of hotel and resort information records are searched and records are selected using any of the following qualifiers or selected search terms: proximity to another location, e.g. larger city, number of accommodations available; proximity to specific area of interest such as a tourist attractions, business location or airports (see: column 5, lines 63 to column 6, lines 7). Cochran et al. further teaches that the selected search terms for searching through the structured database include a search method that displays “IF APT. CODE THEN” section including parameter for the user to determine the appropriate distance to search from a particular hotel, tourist attractions, business location or airports (see: Fig. 4).

One of ordinary skill in the art at the time the invention was made would have found it obvious to include the searching and recording of proximity to specific area of interest such as a tourist attractions, business location or airports as taught by Cochran et al. with the system as taught by Ahlstrom et al. and Webber et al. with the motivation of qualify the search through the data base or identify which of the further categories will be made available to the user (see: Cochran et al.: column 4, lines 49-52).

6. Claims 11, 22, 33, 34, and 37-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahlstrom et al. in U.S. Patent Number 4,862,357 (hereafter referred to as “Ahlstrom”) and U.S. Patent 5,948,040 to DeLorme et al. (hereafter referred to as “DeLorme”), and further in view of Walker et al. in U.S. Patent Number 5,897,620 (hereafter referred to as

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“Walker”), for the same reasons set forth in the previous Office Action (dated 11/19/03). Further reasons appear below.

Claims 11, 22, 33, 34, and 37-42 have not been amended, and are rejected for the same reasons given in the previous Office Action (dated 11/19/03), and incorporated herein. Further reasons appear hereinbelow.

Response to Arguments

7. Applicant's arguments filed 5/19/04 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 5/19/04.

(A) In the remarks Applicants argue in substance that, (1) Ahlstrom, Webber and DeLorme individually or in combination does not teach or suggest identifying an alternative itinerary that includes an alternative origination or destination location within proximity tolerances included in a request reflecting a travel itinerary; (2) Ahlstrom, Webber and DeLorme individually or in combination does not teach or suggest proximity tolerance specifying a user's acceptable range for alternative itineraries; (3) DeLorme does not teach or suggest identifying at least one alternative itinerary that includes an alternative origin or destination that is different from those received in a request reflecting a travel itinerary; (4) DeLorme does not disclose a third party providers providing travel packages, or otherwise providing travel packages pre-configured base upon prior negotiation with the third-party providers; (5) Ahlstrom, DeLorme, and Walker teach or suggest, individually or in combination, a system or method including analyzing a travel itinerary to determine a set of alternative itineraries, determining values for the travel itinerary and the alternative itineraries, sending at least one price-to-beat request and

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receiving responses including a service provider travel itinerary that may be the same, or comparable, to the travel itinerary or an alternative itinerary; and (6) There is fundamental difference between the purpose of the claimed invention supplier driven pricing and Walker's user/buyer driven pricing and MPEP 2143.01 states that a proposed modification of the prior art cannot render the prior art unsatisfactory for its intended purpose.

(B) In response to Applicant's arguments that, (1) Ahlstrom, Webber and DeLorme individually or in combination does not teach or suggest identifying an alternative itinerary that includes an alternative origination or destination location within proximity tolerances included in a request reflecting a travel itinerary. It is respectfully submitted that the Examiner has applied new prior art to the amended features of amended claims 1, 12, 21, 23, 36, 43, 44, 49 and 50 at the present time. As such, Applicant's remarks with regard to the application of Ahlstrom, Webber and/or DeLorme to the amended claim are moot in light of the inclusion of the teachings of Cochran et al., addressed in the above Office Action. In addition, Cochran et al. teaches in one particular embodiment, a structured database of hotel and resort information records are searched and records are selected using any of the following qualifiers or selected search terms: proximity to another location, e.g. larger city, number of accommodations available; proximity to specific area of interest such as a tourist attractions, business location or airports (see: column 5, lines 63 to column 6, lines 7).

(C) In response to Applicant's arguments that, (2) Ahlstrom, Webber and DeLorme individually or in combination does not teach or suggest proximity tolerance specifying a user's acceptable range for alternative itineraries. The Examiner respectfully submits Cochran et al. teaches in one particular embodiment, a structured database of hotel and resort information

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records are searched and records are selected using any of the following qualifiers or selected search terms: proximity to another location, e.g. larger city, number of accommodations available; proximity to specific area of interest such as a tourist attractions, business location or airports (see: column 5, lines 63 to column 6, lines 7). Cochran et al. further teaches that the selected search terms for searching through the structured database include a search method that displays "IF APT. CODE THEN" section including parameter for the user to determine the appropriate distance to search from a particular hotel, tourist attractions, business location or airports (see: Fig. 4).

(D) In response to Applicant's arguments that, (3) DeLorme does not teach or suggest identifying at least one alternative itinerary that includes an alternative origin or destination that is different from those received in a request reflecting a travel itinerary. The Examiner respectfully submits the Webber reference teaches a travel planner system where a travel arranger requests a flight from New York City (NYC) airport to Los Angeles International Airport (LAX) departing no earlier than 8 a.m. and no later than 10 a.m. and arriving no later 3 a.m. (see: column 17, line 38 to column 19, line 47). As result there are 6 flights displayed to the travel arranger including departure from two different airports according to price, date and time (see: column 19, lines 33-44 and Table). The Table of Webber clearly shows that alternate origin locations (e.g. JFK and EWR) are different from the initial origin location entered in the request received from the traveler.

(E) In response to Applicant's arguments that, (4) DeLorme does not disclose a third party providers providing travel packages, or otherwise providing travel packages pre-configured base upon prior negotiation with the third-party providers. The Examiner respectfully submits

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Ahlstrom teaches at the heart of his reservation system sorting and scoring of travel itineraries in accordance with a predetermined travel policy stored in the computer (see column 1, lines 34-38). Accordingly, predetermined travel packages that include travel between the originating location and the destination would be found using the sorting and scoring method of Ahlstrom. Ahlstrom teaches the use of a computer reservation system with means to rank travel itineraries by sorting and scoring the data with regard to a predetermined travel policy (see column 1, lines 35-39). In addition, DeLorme teaches that hotel chains, state tourism bureaus, and local chambers of commerce publish travel package embodiments for planning trips, printing maps, discount offers, trip directions and other such information about a limited range of attractions, events or seasonal activities (see column 13, lines 48-67). This suggests that the potential traveler needing a travel package and contacting a travel agent to discuss the different travel packages available may combine many different packages together to determine which combined package is best suited for their needs. Therefore, it is respectfully submitted that DeLorme et al. teaches a travel package embodiment that exemplifies a pre-configured package based on negotiations with a travel agent.

Furthermore, in response to the Applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., “third party providers providing travel packages, or otherwise providing travel packages pre-configured base upon prior negotiation with the third-party providers”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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(F) In response to Applicant's arguments that, (5) Ahlstrom, DeLorme, and Walker teach or suggest, individually or in combination, a system or method including analyzing a travel itinerary to determine a set of alternative itineraries, determining values for the travel itinerary and the alternative itineraries, sending at least one price-to-beat request and receiving responses including a service provider travel itinerary that may be the same, or comparable, to the travel itinerary or an alternative itinerary. The Examiner respectfully submit that Walker teaches a method and apparatus for the sale of flight tickets where the user submits a bid to purchase an unspecified-time ticket for a specific itinerary, and that the traveler is willing to pay \$375 for the ticket (see: column 6, lines 45-51). That is, a price-to-beat request is sent to a selected service provider with a value associated with the determined value for the travel itinerary. Further, Walker discloses that the reservation system, after determining that the traveler may be supplied with a ticket conforming to their time and value constraints, prints a ticket for the actual flight with the actual flight number and the departure/arrival times. The airline then transmits the ticket to the traveler (see: column 15, lines 3-17). This clearly shows that a traveler determines the date and price for a ticket, and this request is submitted to participating airlines according to restriction set forth by the traveler. Once a participating airline accepts the request by the traveler a ticket is transmitted to the traveler.

(G) In response to Applicant's arguments that, (6) There is fundamental difference between the purpose of the claimed invention supplier driven pricing and Walker's user/buyer driven pricing and MPEP 2143.01 states that a proposed modification of the prior art cannot render the prior art unsatisfactory for its intended purpose. The Examiner respectfully submits Walker teaches a method and apparatus for the sale of flight tickets where the user submits a bid

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to purchase an unspecified-time ticket for a specific itinerary, and that the traveler is willing to pay \$375 for the ticket (see column 6, lines 45-51). That is, a price-to-beat request is sent to a selected service provider with a value associated with the determined value for the travel itinerary. Further, Walker discloses that the reservation system, after determining that the traveler may be supplied with a ticket conforming to their time and value constraints, prints a ticket for the actual flight with the actual flight number and the departure/arrival times. The airline then transmits the ticket to the traveler (see column 15, lines 3-17). In this fashion, the traveler receives a response from the service provider with information and a value on a travel itinerary. Furthermore, section 2143.01 of the MPEP also states "Although statements limiting the function or capability of a prior art device require fair consideration, simplicity of the prior art is rarely a characteristic that weighs against obviousness of a more complicated device with added function." *In re Dance*, 160 F.3d 1339, 1344, 48 USPQ2d 1635, 1638 (Fed. Cir. 1998) (Court held that claimed catheter for removing obstruction in blood vessels would have been obvious in view of a first reference which taught all of the claimed elements except for a "means for recovering fluid and debris" in combination with a second reference describing a catheter including that means. The court agreed that the first reference, which stressed simplicity of structure and taught emulsification of the debris, did not teach away from the addition of a channel for the recovery of the debris.). Therefore, the system of Walker teaching user/buyer pricing is only one embodiment of the reservation system and transmitting a ticket to the traveler clearly is representation of receiving a response from a service provider with information on the service providers travel itinerary as recited in claims 11, 22, 33 and 34.

In addition, the Examiner recognizes obviousness is not determined by what the

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references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions in *In re DeLisle* 406 Fed 1326, 160 USPQ 806; *In re Kell, Terry and Davies* 208 USPQ 871; and *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988) (citing *In re Lalu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)).

Further, it was determined in *In re Lamberti et al*, 192 USPQ 278 (CCPA) that:

- (i) obviousness does not require absolute predictability;
- (ii) non-preferred embodiments of prior art must also be considered; and
- (iii) the question is not express teaching of references, but what they would suggest.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Morgan whose telephone number is (703) 605-4441. The examiner can normally be reached on 8:30 a.m. - 5:00 p.m. Mon - Fri.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (703) 305-9588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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